



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date:	Enrolled	Bill No:	AB 2618
Tax Program:	Sales and Use	Author:	Ma
Sponsor:	BOE	Code Section:	RTC 6092.5
Related Bills:		Effective Date:	01/01/13

BILL SUMMARY

This **Board of Equalization (BOE)-sponsored bill** prohibits licensed auto dismantlers and auto auctioneers from accepting resale certificates from purchasers of vehicles, mobile homes, and commercial coaches, unless the purchasers are licensed dealers, dismantlers, auto repair dealers, or scrap metal processors, as specified and defined.

ANALYSIS

CURRENT LAW

Under California's Sales and Use Tax Law (Part 1, Division 2 of the Revenue and Taxation Code, commencing with Section 6001), except where specifically exempted by statute, sales tax is imposed on all retailers for the privilege of selling tangible personal property at retail in this state.

Under existing law, every person making a retail sale of a vehicle is a retailer, but the retailer is exempt from the sales tax when the retailer is not a licensed dealer with the Department of Motor Vehicles (DMV). In this instance, the applicable tax is the use tax, rather than a sales tax, and the purchaser of the vehicle is required to pay the use tax to the DMV at the time of registration of the vehicle.

The Vehicle Code requires every person engaged in the business of selling vehicles to obtain a license. Chapter 3 of Division 5 (commencing with Section 11500) sets forth the requirements of a person wishing to engage in business as an automobile dismantler. The law requires such a person to have a permanent place of business and to apply for a dismantler's license with the DMV. Section 220 of the Vehicle Code defines an "automobile dismantler" as any person engaged in the business of buying, selling, or dealing in vehicles of a type required to be registered under the Vehicle Code, including non-repairable vehicles, for the purpose of dismantling the vehicles, who buys or sells the integral parts and component materials thereof, or deals in used motor vehicle parts. An automobile dismantler also includes any person that keeps or maintains two or more unregistered vehicles no longer intended for, or in condition for, legal use on the highways, whether for the purpose of resale of used parts, for the purpose of reclaiming for use some or all of the materials, or for any other purpose. Section 221 provides that the term "automobile dismantler" does not include an owner of a steel mill, scrap metal processing facility, or similar establishment purchasing vehicles not for the purpose of selling the vehicles, in whole or in part, but exclusively for the purpose of reducing the vehicles to their component materials.

Business and Professions Code Section 9880.1 defines an “automotive repair dealer” as a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles. This definition includes auto body repair in addition to mechanical repair. A person engaged in business as an automotive repair dealer is required to register with the Bureau of Automotive Repair.

PROPOSED LAW

This bill adds Section 6092.5 to the Sales and Use Tax Law to provide that a licensed dismantler or any person selling a vehicle at auction is presumed to be making a sale at retail. The seller may rebut this presumption by accepting a resale certificate from a licensed dealer, dismantler, automotive repair dealer, or scrap metal processor. The bill prohibits the seller from accepting a resale certificate from any purchaser other than those mentioned.

The bill provides that the resale certificate must include the license or registration number issued to the dealer, dismantler or automotive repair dealer, as applicable. If a seller fails to timely obtain a resale certificate, the BOE may prescribe alternative methods of verifying that the transaction is a valid sale for resale to a dealer, dismantler, automotive repair dealer, or scrap metal processor.

The bill would become effective on January 1, 2013.

BACKGROUND

The sales tax is generally imposed upon the retailer for the privilege of selling tangible personal property at retail in this state. If a person is purchasing property for the purpose of reselling the property prior to any use (other than retention, demonstration, or display) of the property, the seller may accept a resale certificate from the purchaser. Acceptance of a resale certificate in good faith relieves the seller of the liability for the sales tax. The purchaser is then liable for the sales tax on the subsequent retail sale of the property (unless the property is again sold for resale or is exempt for some other reason). If a purchaser who issues a resale certificate in good faith thereafter makes any taxable use of the property, he or she becomes liable for the use tax on the cost of the property.

The BOE's Regulation 1668, *Resale Certificates* provides that, in the absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in the regulation and otherwise appears to be valid on its face. If the purchaser insists that he or she is buying for resale property of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific property is being purchased for resale in the regular course of business. Regulation 1566, *Automobile Dealers and Sales Representatives*, further provides that a dealer who sells a vehicle to a retailer who is not regularly engaged in selling or leasing vehicles should accept a resale certificate only if it contains a statement that the specific vehicle is being purchased for resale in the regular course of business.

Under the Vehicles Code, persons engaged in the business of selling vehicles, such as auto auctioneers, are generally required to obtain a license from the Department of Motor Vehicles (DMV) to sell vehicles. This license is generally referred to as a dealer's license. Persons engaged in the business of auto dismantling must also obtain a dismantler's license from DMV. Sales of vehicles for resale between licensed dealers and dismantlers are generally permitted and require the issuance and acceptance in good faith of a resale certificate.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

The primary problem area involves salvage certificate vehicles. A salvage certificate vehicle is a vehicle that has been wrecked or damaged, and the owner, insurance company, financial institution or leasing company considers it too expensive to repair. Generally, this involves forwarding the certificate of ownership, license plates, and a required fee to the DMV. The DMV then issues a salvage certificate for the vehicle and the vehicle is excluded from DMV registration requirements. The vehicle may subsequently be repaired and re-registered with the DMV. To be re-registered, the law requires that the vehicle pass a safety inspection with the DMV or the California Highway Patrol. It is then classified as a “revived salvage” or “salvaged” vehicle and the certificate of ownership (i.e., the pink slip) so reflects that classification.

Salvaged auto auctions operate somewhat differently than general auto auctions with respect to who they allow to come onto the premises and purchase the auctioned vehicles. Since a salvage certificate vehicle is not subject to registration with DMV, salvaged auto auctions allow both dealers and non-dealers to purchase the vehicles from them (generally, general auto auctions only allow licensed dealers to purchase the auctioned vehicles). Therefore, a salvaged auto auctioneer or dismantler selling such a vehicle to someone other than a licensed dealer may properly accept resale certificate from any person with a seller’s permit, as long as the resale certificate is properly completed by the purchaser in accordance with the BOE’s regulations. For example, a person with a seller’s permit for the operation of a restaurant may properly issue a resale certificate for the purchase of a salvage certificate vehicle from an auto auction if the salvage certificate vehicle will be resold by the purchaser. The purchaser may resell the salvage certificate vehicle as-is, sell the various parts and components of the vehicle to different people, or repair the vehicle so that it may be resold as a vehicle that may be operated on the highway again.

Audits and investigations have disclosed that BOE seller’s permit holders that are not licensed dealers are acquiring salvage certificate vehicles from auto auctions and dismantlers by issuing a resale certificate, and are not reporting any subsequent sales of vehicles. Additionally, these purchasers do not appear to be registering many of the vehicles with DMV and reporting the applicable use tax, or are registering the vehicles at a declared purchase price significantly lower than the actual purchase price (DMV collects the use tax as the BOE’s agent, and generally bases the use tax due on the purchase price declared by the purchaser).

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the BOE and is intended to close a tax gap related to the auto auction and dismantling industry where purchasers who are not properly licensed to sell, repair, or dismantle vehicles are purchasing the vehicles without paying tax reimbursement to the sellers or use tax to DMV, by issuing a resale certificate at the time of purchase at a salvage auto auction. Alternatively, some of the purchasers are remitting use tax to DMV upon registration of the vehicles, but declaring a purchaser price upon which the use tax is based at a much lower amount. This bill will require auto auctions (and dismantlers) to collect tax reimbursement on the sale of any vehicle that is sold to any person other than a licensed dealer, dismantler, automotive repair dealer, or scrap metal processor. The bill enables auto auctioneers to also accept a resale certificate from any person duly licensed in another state, country or jurisdiction as a dealer, dismantler, automotive repair dealer, or scrap metal processor.

2. **This bill provides a solution to a widespread problem.** Under current law, in order to combat this non-reporting and underreporting of tax, the staff has attempted to follow-up with the buyers of these vehicles. However, there are hundreds of thousands of these vehicles sold, and the BOE simply doesn't have the manpower to follow-up on all of them. Of the relative few that the staff has followed up upon, in many instances, the purchaser was no longer in business or unable to be located. By requiring that tax reimbursement be paid to the auto auction or dismantler at the time of purchase, this tax avoidance opportunity would be greatly diminished.
3. **When purchasers do resell the vehicles, they would be entitled to a credit.** As is the case whenever a purchaser has reimbursed the seller for the tax on the purchase of an item that the purchaser resells prior to making any taxable use of the property, the BOE's Regulation 1701, "*Tax-Paid Purchases Resold*," enables the purchaser to claim a deduction for the purchase price of the property on the return in which the sale of the property is included. Therefore, under this bill, if a purchaser pays the dismantler or auctioneer tax reimbursement on a vehicle that the purchaser subsequently resells before any taxable use is made, the purchaser would be entitled to claim a deduction on the return for which the sale of the vehicle is included.

COST ESTIMATE

Some insignificant costs would be incurred in revising the BOE's affected regulation and publications. These costs would be absorbable.

REVENUE ESTIMATE

BOE staff performed a 6-month study of certain California auto auctioneers and determined the estimated sales of vehicles to non-dealers in California. Based on a statistical sampling of vehicles sold to non-dealers, the staff found that approximately 41% of the vehicles sold were never registered with DMV, and of those vehicles registered, 26% of the actual sales price was not reported to DMV (in other words, the staff identified the sales price of the vehicle sold by the auctioneer, but when the purchaser registered the vehicle with DMV, the purchaser declared a purchase price less than the actual purchase price – resulting in a lower payment of use tax than required by law). These combined amounts leads to an estimated loss of tax on \$67 million of vehicle sales (\$49 million in sales and purchases attributable to unregistered vehicles; \$18 million attributable to understating the purchase price upon registration with DMV), which this bill seeks to recover.

Accordingly, the state and local sales and use tax gain associated with this bill would amount to an estimated \$5.44 million annually (\$67 million x 8.12%), using a statewide average sales and use tax rate of 8.12%.

Analysis prepared by:	Sheila T. Waters	916-445-6579	08/21/12
Contact:	Robert Ingenito	916-445-0840	
Is			2618abENRstw.doc

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.